

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL GEHART,

Plaintiff,

v.

VISALUS, INC., a corporation, et al.,

Defendants.

Case No. 4:17-CV-12132-MFL-DRG

Hon. Matthew F. Leitman

**DEFENDANT RYAN BLAIR'S CONCURRENCE WITH AND JOINDER IN
THE MOTION TO DISMISS FILED BY VISALUS, INC., NICK
SARNICOLA, AND BLAKE MALLEN (DKT. 35)**

Defendant Ryan Blair, by and through his attorneys, Quarles & Brady LLP, hereby concurs with, joins in, and adopts as if fully set forth herein the Motion to Dismiss Plaintiff's First Amended Complaint ("FAC") filed by ViSalus, Inc., Nick Sarnicola, and Blake Mallen (the "Motion," Dkt. 35). Pursuant to Local Rule 7.1, on August 9, 2018, undersigned counsel emailed Plaintiff's counsel regarding the grounds for Mr. Blair's concurrence with and joinder in the Motion. In response, Plaintiff did not agree to dismiss the FAC as to Mr. Blair or propose filing an Amended Complaint.

Mr. Blair supplements the arguments in the Motion as follows:

As confirmed by Plaintiff's counsel during the meet-and-confer process, Plaintiff's claims for tortious interference (Count II) and unjust enrichment (Count III) are brought only against ViSalus, Inc., Nick Sarnicola, and Blake Mallen. (Dkt. 33 ¶¶ 162–67 & 171–72.)

Plaintiff alleges in the FAC that Mr. Blair was the CEO of ViSalus "until 2016." (*Id.* ¶ 27.) Yet the actions that Plaintiff complains about with respect to Amazon and the Founders Equity Incentive Plan (the "Plan") did not occur until at least June 2017. (*Id.* ¶¶ 136–37, 177–78.) Thus, Mr. Blair could not have had any role in the decision to "eliminate Plaintiff ... from selling on Amazon" or "seize Plaintiff's earned equity shares in ViSalus." (*Id.* ¶¶ 137, 185.) Moreover, an order requiring Mr. Blair to allow Plaintiff to re-open his Amazon storefront or re-issue his units in the Plan would be useless because Mr. Blair has no power or authority to do either.

Plaintiff's allegation that Mr. Blair left the company in 2016, standing alone, is fatal to Plaintiff's claims against Mr. Blair for Promissory Estoppel (Count I, Amazon Sales), Promissory Estoppel (Count IX, Founders Equity Incentive Plan), Shareholder Oppression, Breach of Fiduciary Duty, Conversion, and Declaratory Relief.

WHEREFORE, Ryan Blair respectfully requests that the Court dismiss the First Amended Complaint against him in its entirety for the reasons stated in the Motion.

Dated: August 10, 2018

Respectfully submitted,

By: /s/ Nicholas B. Gorga
Attorney for the Defendants

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1, I certify that I made contact with counsel for Plaintiff, Jennifer Grieco of Neuman Anderson Grieco McKenney, P.C., via email on August 9, 2018 to communicate Mr. Blair's arguments for dismissal. Concurrence on the requested relief was not granted.

By: /s/ Michael S. Catlett
Attorney for the ViSalus Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 10 2018, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

By: /s/ Nicholas B. Gorga

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